

STATE OF SOUTH CAROLINA

(Caption of Case)

IN RE: Richard Hatalski,

Complainant,

vs

PBT Communications, Inc.

Defendant.

BEFORE THE
PUBLIC SERVICE COMMISSION
OF SOUTH CAROLINA

COVER SHEET

DOCKET

NUMBER: 2009 - 119 - C

(Please type or print)

Submitted by: Sue-Ann Gerald Shannon

Address: McNair Law Firm, P.A.

P O Box 11390

Columbia, SC 29211

SC Bar Number: 71181

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Other: _____

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NOTE: The cover sheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for use by the Public Service Commission of South Carolina for the purpose of docketing and must be filled out completely.

DOCKETING INFORMATION (Check all that apply)

☐ Emergency Relief demanded in petition

☐ Request for item to be placed on Commission's Agenda expeditiously

☐ Other: _____

INDUSTRY (Check one)

- ☐ Electric
☐ Electric/Gas
☐ Electric/Telecommunications
☐ Electric/Water
☐ Electric/Water/Telecom.
☐ Electric/Water/Sewer
☐ Gas
☐ Railroad
☐ Sewer
☒ Telecommunications
☐ Transportation
☐ Water
☐ Water/Sewer
☐ Administrative Matter
☐ Other: _____

NATURE OF ACTION (Check all that apply)

- | | | |
|--|--|--|
| <input type="checkbox"/> Affidavit | <input checked="" type="checkbox"/> Letter | <input type="checkbox"/> Request |
| <input type="checkbox"/> Agreement | <input type="checkbox"/> Memorandum | <input type="checkbox"/> Request for Certification |
| <input checked="" type="checkbox"/> Answer | <input type="checkbox"/> Motion | <input type="checkbox"/> Request for Investigation |
| <input type="checkbox"/> Appellate Review | <input type="checkbox"/> Objection | <input type="checkbox"/> Resale Agreement |
| <input type="checkbox"/> Application | <input type="checkbox"/> Petition | <input type="checkbox"/> Resale Amendment |
| <input type="checkbox"/> Brief | <input type="checkbox"/> Petition for Reconsideration | <input type="checkbox"/> Reservation Letter |
| <input type="checkbox"/> Certificate | <input type="checkbox"/> Petition for Rulemaking | <input type="checkbox"/> Response |
| <input type="checkbox"/> Comments | <input type="checkbox"/> Petition for Rule to Show Cause | <input type="checkbox"/> Response to Discovery |
| <input type="checkbox"/> Complaint | <input type="checkbox"/> Petition to Intervene | <input type="checkbox"/> Return to Petition |
| <input type="checkbox"/> Consent Order | <input type="checkbox"/> Petition to Intervene Out of Time | <input type="checkbox"/> Stipulation |
| <input type="checkbox"/> Discovery | <input type="checkbox"/> Prefiled Testimony | <input type="checkbox"/> Subpoena |
| <input type="checkbox"/> Exhibit | <input type="checkbox"/> Promotion | <input type="checkbox"/> Tariff |
| <input type="checkbox"/> Expedited Consideration | <input type="checkbox"/> Proposed Oder | <input type="checkbox"/> Other: _____ |
| <input type="checkbox"/> Interconnection Agreement | <input type="checkbox"/> Protest | |
| <input type="checkbox"/> Interconnection Amendment | <input type="checkbox"/> Publisher's Affidavit | |
| <input type="checkbox"/> Late-Filed Exhibit | <input type="checkbox"/> Report | |

Print Form

Reset Form

May 12, 2009

Sue-Ann G. Shannon

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via Electronic Filing

Charles L. A. Terreni
Chief Clerk and Administrator
SC Public Service Commission
PO Drawer 11649 (29211)
101 Executive Center Drive
Suite 100
Columbia, SC 29210

Re: Richard Hatafski v. PBT Communications, Inc.
Docket No. 2009-119-C

Dear Mr. Terreni:

Enclosed for filing please find the Amended Answer of PBT Communications, Inc., and PBT Telecom, Inc., in the above-referenced docket. By copy of this letter, I am serving a copy of this Amended Answer on all parties of record by both first-class mail and email communication.

If you have any questions or need additional information, please do not hesitate to contact me.

Sincerely,



Sue-Ann G. Shannon

Enclosures

cc: Mr. L.B. Spearman
Parties of record

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The Tower at 1301 Gervais
1301 Gervais Street, 11th Floor
Columbia, SC 29201

Mailing Address
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BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA

Docket No. 2009-119-C

IN RE:

Richard Hatalski,

Complainant,

v.

PBT Communications, Inc.,

Defendant.

AMENDED ANSWER OF
PBT COMMUNICATIONS, INC.

In compliance with the Notice issued March 23, 2009, PBT Communications, Inc., and PBT Telecom, Inc.¹ (collectively, "PBT") respectfully submit this Amended Answer to the allegations made by Richard Hatalski in a letter ("Complaint Letter") received by the Public Service Commission of South Carolina ("the Commission") on March 11, 2009. Following submission of the Answer filed on April 21, 2009, with the Commission, Mr. Hatalski has raised additional allegations and claims for relief in emails submitted to the Commission, specifically, (1) an emailed communication from Rick Hatalski to Judy Matthews, dated April 30, 2009, at 1:37 p.m. ("Email No. 1"); and (2) an emailed communication from Rick Hatalski to Judy Matthews, dated April 30, 2009, at 2:35 p.m. ("Email No. 2").

¹ While this action purports to be against PBT Communications, Inc., the installation and work was actually performed by PBT Telecom, Inc. PBT Communications and PBT Telecom are affiliated companies and this Amended Answer is being filed on behalf of both companies.

Mr. Hatalski is not a current customer of PBT. PBT has right of access through a right-of-way executed by Mr. Hatalski. Mr. Hatalski's Complaint Letter and Email Nos. 1 and 2 refer to issues that occurred during installation of a fiber optic drop at 102 John Long Road in Gilbert on February 10, 2009. Mr. Hatalski specifically complains that the fiber drop installation led to damages to (1) a sewer line; (2) a freshwater line; (3) a mail box; and (4) "possibly," to a coaxial video line. PBT answers the Complaint Letter, as well as Email Nos. 1 and 2, and replies to the allegations set forth by Mr. Hatalski, as follows:

FOR A FIRST DEFENSE

1. PBT denies each and every allegation and statement set forth in Mr. Hatalski's Complaint Letter and Email Nos. 1 and 2 except as hereinafter admitted and, further, demands strict proof thereof.

FOR A SECOND DEFENSE

2. As to the first, unnumbered paragraph located on the first unnumbered page of Mr. Hatalski's Complaint Letter, PBT is without information and belief as to the allegations and, therefore, denies same.

3. As to the second, unnumbered paragraph located on the first unnumbered page of Mr. Hatalski's Complaint Letter, PBT admits its address is correct as listed.

4. As to the third, unnumbered paragraph located on the first unnumbered page of Mr. Hatalski's Complaint Letter, PBT admits that it accessed Mr. Hatalski's property through a right-of-way in order to install fiber optic cable. PBT admits that Mr. Hatalski did not request the installation and that no notice was given as it was not required.

5. As to the paragraph numbered 1) located on the first unnumbered page of Mr. Hatalski's Complaint Letter, PBT admits only that Mr. Hatalski's sewer line was cracked during installation but was subsequently repaired. PBT denies all remaining allegations.

6. As to the paragraph numbered 2) located on the first unnumbered page of Mr. Hatalski's Complaint Letter, PBT admits only that some damage was caused to the water line during installation, which was subsequently repaired. PBT denies all remaining allegations.

7. With respect to the paragraph numbered 3) located on the first unnumbered page of Mr. Hatalski's Complaint Letter, PBT denies the allegations regarding alleged possible damage to a video line.

8. As to the paragraph numbered 4) located on the second unnumbered page of Mr. Hatalski's Complaint Letter, PBT denies that his mail box was "crushed." Mr. Hatalski's mail box was later replaced with a new one. PBT denies the remaining allegations.

9. PBT denies all allegations contained in the second, unnumbered paragraph located on the second unnumbered page of Mr. Hatalski's Complaint Letter.

10. With respect to the third, unnumbered paragraph located on the second unnumbered page, PBT admits that Mr. Hatalski spoke with Mr. Whetstone of PBT, but denies the remaining allegations contained within this paragraph.

11. With respect to the fourth, unnumbered paragraph located on the second unnumbered page, PBT admits that it has received a complaint filed by Mr. Hatalski with the Office of Regulatory Staff, but denies the remaining allegations.

FOR A THIRD DEFENSE

12. With respect to Email No. 1, PBT is without information and belief as to Mr. Hatalski's efforts with respect to filing his complaint, as well as to his research of the Lexington

County property records. PBT denies each and every remaining allegation made by Mr. Hatalski.

FOR A FOURTH DEFENSE

13. With respect to Email No. 2, PBT denies that its attorneys indicated that Mr. Hatalski was "satisfied with this case." The letter accompanying PBT's Answer specifically read, "Mr. Hatalski stated that he was satisfied with the repairs made." Since Mr. Hatalski indicated that he was "satisfied" with the work performed by PBT and its contractors, PBT is still of the belief that this matter should be concluded as resolved by this Commission and dismissed with prejudice. PBT admits that it visited the property on April 24, 2009, but only after Mr. Hatalski called on that same date to complain that his coaxial cable had been "cut" and that his well pump breaker had tripped. PBT then sent technicians to his property to test the cable and found that it had not been cut and appeared to be fine. PBT further admits that it, or its contractors, returned on April 27th and April 28th, but only to inspect and replace the control box for his well. Any problem or issue as to this item was unrelated to PBT's installation.² PBT admits that it has spent \$2,412.00, as well as additional sums of money and resources, to make repairs and improvements to Mr. Hatalski's property. PBT denies that it failed to notify the appropriate reporting entity, and PBT did in fact notify Palmetto Utility Protection Services, Inc. (PUPS) prior to performing installation of fiber optic in the area. PBT denies each and every remaining allegation made by Mr. Hatalski.

² PBT also visited Mr. Hatalski personally on April 3d after he called to inform PBT that he was in the area and wanted to talk about a problem with his well pump. PBT representatives met Mr. Hatalski on the premises, where they found that the breaker had merely tripped. PBT reset the breaker. Also at this time, Mr. Hatalski stated that he was "satisfied" with the work performed by PBT.

FOR A FIFTH DEFENSE
(Failure to State a Cause of Action)

14. Mr. Hatalski has failed to state a cause of action against PBT upon which relief may be granted and his Complaint Letter and Email Nos. 1 and 2 should, therefore, be dismissed. PBT has resolved all installation-related issues and, moreover, has made improvements to the property unrelated to the installation by PBT.

15. Although the installation occurred on February 10th, PBT did not learn of Mr. Hatalski's complaint as to any possible damages to his property until Monday, March 2d, through a voice message left by Mr. Hatalski on Saturday, February 28th, complaining of a damaged sewer line. On the same day PBT learned of the complaint, PBT immediately contacted the contractor, Trans-Tel, Inc. ("TTI"), that installed the fiber cable in order to begin repairs to Mr. Hatalski's property. Specifically, PBT took the following actions to address the allegations now complained of by Mr. Hatalski:

a. Sewer Line. Mr. Hatalski alleges that PBT caused damage to his sewer line, resulting in sewer water flooding his driveway and seeping into Lake Murray. Mr. Hatalski also claims that his son, who, upon information and belief, is a part-time resident of the premises, was unable to make use of the toilet and shower for "about 1 week." If these facilities were unavailable for use, it is because Mr. Hatalski waited 17 days after installation to report any alleged problems to PBT. As stated above, PBT did not learn of the problem until March 2d. On the same day PBT learned of Mr. Hatalski's telephoned complaint, PBT found no seepage and made the necessary repairs to a cracked sewer line. Also on that same day, Mr. Hatalski's son indicated that he was satisfied with the repairs and that the bathroom was in use. In addition, the owner of Sharpe's Septic Tank Co., which had installed the sewer system 10 years before, inspected the sewer repairs on

March 4th, and again on March 9th, and found them to be completed to his satisfaction. At Mr. Sharpe's recommendation, PBT also replaced the couplings with a new and improved product. Mr. Sharpe has agreed to inspect the sewer line for one year to ensure that the repairs made continue to function properly.

b. Water Line. Mr. Hatalski alleges that PBT caused damage to his water line. On the day of installation, PBT noticed damage to the water line and made the repairs at that time. PBT returned to mend a leak in the line on March 3d.

c. Mail Box. Mr. Hatalski claims that his mail box was "crushed." During installation of the mainline along John Long Road on Friday, February 27th, the front door of the box became bent. On the following Tuesday, PBT replaced the mail box with a new one after learning of the damage.

d. Video Line. Mr. Hatalski alleges that his coaxial video line was "possibly" cut during the installation. PBT learned of this allegation for the first time upon reading the Complaint Letter. As mentioned above, PBT tested the cable and found that it was not cut.

16. In addition to taking the above actions to address Mr. Hatalski's concerns, PBT also made improvements to Mr. Hatalski's property which were unrelated to the installation by PBT. Specifically, PBT placed gravel upon 90% of the driveway, which, according to Mr. Hatalski's son, had previously been in poor condition and suitable only for use with all-terrain vehicles. A total of \$2,412.00 was expended to make this particular improvement to his property.

17. PBT has in good faith attempted to address Mr. Hatalski's concerns. PBT has made all necessary repairs, as well as made additional improvements to his property that were

unrelated to PBT's installation of the fiber cable. Both Mr. Hatafski's son and the installer of the sewer system have inspected the repairs and both have indicated that all of the repairs have been satisfactorily completed. There is nothing contained within the Complaint Letter or his email communications that provides a basis for this Commission to order any additional relief than that already given to Mr. Hatafski in that PBT has made all necessary and satisfactory repairs as well as voluntary improvements to his property.

18. Mr. Hatafski has further failed to state a cause of action upon which relief may be granted because PBT has an express right of access to Mr. Hatafski's property through a right-of-way executed by him to Pond Branch Telephone Company, Inc., its successors or assigns, on February 12, 1992, a copy of which is attached hereto as Exhibit A, which grants the utility right of access to install, maintain, and/or remove telephone equipment on the property at issue in this matter. PBT, as successor to Pond Branch Telephone Company, therefore, already had the express written permission of Mr. Hatafski to enter his property to make the installation.

**FOR A SIXTH DEFENSE
(Lack of Subject Matter Jurisdiction)**

19. This Commission lacks the jurisdiction to entertain the "trespass" allegation raised by Mr. Hatafski, as well as any alleged constitutional or other property violation, or to award the "grief and suffering" damages that he seeks.

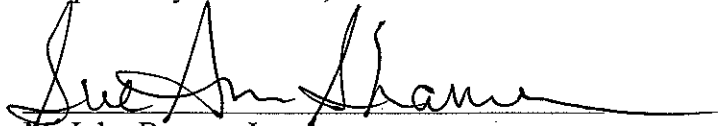
20. The Commission has previously ruled that it does not have the authority to "prosecute" a utility for an alleged violation of the law or to consider whether a utility has violated the property rights of a landowner. *L.G. Elrod v. Southern Bell Telephone and Telegraph Co.*, Order Denying Request to Investigate, Order No. 92-406 (May 26, 1992) (attached hereto as Exhibit B). In *Elrod*, the complainant alleged that a telephone utility had improperly installed poles and lines on his property without first obtaining his permission or an

easement or right-of-way. This Commission concluded that because it was a "creature of statute" with only the authority to specifically enforce provisions of law related to the regulation of telephone utilities, it did not have the jurisdiction to investigate the utility for property rights violations alleged by a landowner. This precedent squarely applies to the allegations and the claims for relief raised by Mr. Hatalski.

21. Although PBT denies it has "trespassed" upon Mr. Hatalski's property or violated his constitutional rights, thereby entitling him to "grief and suffering" or any other damages he may seek, even if such were found to be true, this Commission does not possess the authority to make such findings or to order PBT to pay damages.

WHEREFORE, having fully answered the Complaint Letter and Email Nos. 1 and 2, PBT respectfully requests that this Commission dismiss Richard Hatalski's Complaint Letter and Email Nos. 1 and 2 for the reasons stated herein and grant such other and further relief as is just and proper.

Respectfully submitted,



M. John Bowen, Jr.

Margaret M. Fox

Sue-Ann Gerald Shannon

McNAIR LAW FIRM, P.A.

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sshannon@palmettoinstitute.org

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Fax: (803) 753-3219

ATTORNEYS FOR PBT COMMUNICATIONS,
INC., and PBT TELECOM, INC.

May 12, 2009
Columbia, South Carolina.

STATE OF SOUTH CAROLINA

County of

Lexington

RIGHT-OF-INGRESS, EGRESS, AND
 REGRESS FOR INSTALLATION,
 MAINTENANCE AND REMOVAL OF
 TELEPHONE EQUIPMENT

KNOW ALL MEN BY THESE PRESENTS, that the undersigned

Richard N. Hatala

does hereby grant unto Pond Branch Telephone Company, Inc., its successors
 or assigns, the right to enter upon the lands of the undersigned known as
102 John Long Rd. Gilbert, SC 29054
 (Address of Property)

to install, maintain and/or remove telephone equipment. The Pond Branch
 Telephone Company, Inc., is also granted the right to install a telephone
 service drop, either overhead or underground from its point of connection
 to the point that a protector is to be installed on the property of the
 undersigned. Pond Branch Telephone Company, Inc., is further granted the
 right to trim or cut trees, or shrubbery that may interfere with or
 threaten to interfere with the operation of the telephone service drop.

IN WITNESS WHEREOF, the undersigned has set (his) (her) (their) hand(s)
 and seal(s) this 12th day of February, 1992.

In the presence of:

Lula B. Etheredge
W. H. Ricard

+ Richard N. Hatala (L.S.)

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 92-297-C - ORDER NO. 92-406 ✓
MAY 26, 1992

| | | |
|-----------------------------|---|---------------|
| IN RE: L. G. Elrod, |) | |
| |) | |
| Complainant, |) | ORDER DENYING |
| |) | REQUEST TO |
| |) | INVESTIGATE |
| v. |) | |
| |) | |
| |) | |
| Southern Bell Telephone and |) | |
| Telegraph Company, |) | |
| |) | |
| Respondent. |) | |
| |) | |
| |) | |

This matter is before the Public Service Commission of South Carolina (the Commission) on the request of L.G. Elrod (Complainant) asking the Commission to conduct a statewide investigation of Southern Bell Telephone & Telegraph Company's (Respondent's) policy regarding installation of equipment without obtaining appropriate easements or right-of-ways. Complainant asserts Respondent has been improperly installing its poles and lines on private property without first obtaining an easement, right-of-way, or the permission of the property owner. Complainant asks the Commission to undertake this investigation pursuant to S.C. Code Ann. §58-9-770 and §58-9-820 (1976).

DOCKET NO. 92-297-C - ORDER NO. 92-406
MAY 26, 1992
PAGE 2

South Carolina Code Ann. §58-9-770 states, in relevant part,
as follows:

Whenever it shall appear that any telephone utility is failing or omitting... to do anything required of it by law... an action or proceeding shall be prosecuted in any court of competent jurisdiction in the name of the Commission or the State... (Emphasis added).

South Carolina Code Ann. §58-9-820 states, in relevant part, as follows:

In addition to the foregoing expressly enumerated powers the Commission shall enforce, execute, administer and carry out by its order, ruling, regulation or otherwise all the provisions of Articles 1 through 13... or any other provisions of the law of this State regulating telephone utilities.

The Commission concludes that Section 58-9-770 does not authorize it to prosecute a telephone utility for an action which is alleged to have violated the law. The statute merely provides that an action may be prosecuted in the name of the Commission.

Further, the Commission concludes that Section 58-9-820 does not authorize it to consider whether a telephone utility has violated the property rights of a landowner. Instead, Section 58-9-820 merely authorizes the Commission to specifically enforce the provisions of Articles 1 through 13 of Chapter 9 of Title 58 and to enforce other provisions of law which regulate telephone utilities. The Commission concludes that, while a telephone utility may be subject to the same basic principles of property law as any other entity, the enforcement of those property laws is not within the scope of the Commission's regulation of telephone utilities. In fact, as a creature of statute, the Commission only

DOCKET NO. 92-297-C - ORDER NO. 92-406
MAY 26, 1992
PAGE 3

has authority to regulate the rates and service of telephone utilities.

Accordingly, the Commission hereby denies the Complainant's request to investigate Respondent's policy regarding the use of easements and right-of-ways on the ground that it lacks jurisdiction to consider the issue.

IT IS SO ORDERED.

BY ORDER OF THE COMMISSION:


Chairman

ATTEST:


Executive Director

(SEAL)

BEFORE
THE PUBLIC SERVICE COMMISSION
OF
SOUTH CAROLINA

Docket No. 2009-119-C

IN RE: Richard Hatalski,

Complainant,

vs.

PBT Communications, Inc.

Defendant.

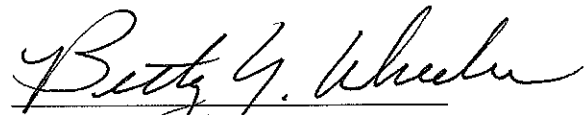
**CERTIFICATE
OF SERVICE**

I, Betty Y. Wheeler, do hereby certify that I have this date served one (1) copy of an Amended Answer on behalf of PBT Communications, Inc., and PBT Telecom, Inc. upon the following by causing said copies to be deposited with the United States Postal Service, first class postage prepaid and affixed thereto, and addressed as follows:

Representing Richard Hatalski:

Richard Hatalski
102 John Long Road
Gilbert, SC 29054

Nanette S. Edwards, Esquire
Office of Regulatory Staff
1401 Main Street
Suite 900
Columbia, SC 29201



Betty Y. Wheeler
McNAIR LAW FIRM, P.A.
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May 12, 2009

Columbia, South Carolina